

Commissioner of Central Excise, Vs. M/S. Hindustan Lever Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-27-2001

Reported in : (2001)(137)ELT961Tri(Mum.)bai

Appellant : Commissioner of Central Excise,

Respondent : M/S. Hindustan Lever Ltd.

Advocate for Pet/Ap. : Shri. M.H.Patil

Judgement :

1. This is a department's appeal against the decision of made by the Commissioner of Central Excise (Appeals), Nagpur in Order-in-Appeal No.262-CE/IND/92 dated 27.4.1992. In the said order the Commissioner (Appeals) decided several points in favour and also against the assessee. The appeal before us is restricted to three points which are itemized below:- 2. The assessee in this case is engaged in the manufacture of soap, cosmetics and toilet preparations falling under chapter 33 and 34 of the schedule to the Central Excise Tariff Act, 1985. In the CI's filed by the assessee it claimed deductions on several points. The order-in-original passed by the jurisdictional authority was against the assessee against which an appeal was filed before the appellate authority. The Commissioner (Appeals) by the impugned order in disposing of several appeals before him, as stated above, decided for and against the assessee. The points on which the department relies should have been agitated before us and such points have been indicated supra.

3. As far as the first point is concerned, namely the quantity discount, it has been brought to our notice by Shri M.H.Patil, learned counsel for the appellant that a decision has been rendered by the Supreme Court in favour of the assessee in the case of GOI vs. MRF (77) ELT 433. Hence this is decided in favour of the assessee. This decision has been followed in the case of the assesses themselves in CCE vs.

Hindustan Lever Ltd. (27) RLT 581. It was vehemently argued against the said decision by the learned DR. We are unable to agree with the various attempt made by the DR. It has been held at para 58 in the said judgment of the Supreme Court that keeping in view the clarificatory order in Bombay Tyre International this claim has been rightly allowed by the Assistant Collector in favour of the assessee. This observation of the Supreme Court in para 58 has been followed by the Tribunal in the assessee's own case reported in (27) RLT 581 at para 3 thereof.

Hence we hold this point in favour of the assessee and against the department.

4. As far as the second and third points are concerned, namely handling expenses and interest on finished goods in stock, it is conceded by Shri Patil that the same has been decided against the assessee in a number of decisions, namely GOI vs. MRF (77) ELT 433 and the assessee's own case reported in (27) RLT 581. Hence this is decided in favour of the department.

5. The appeal is disposed of accordingly and the matter is remanded to the jurisdictional assessing authority for re-quantification on the basis of the above order.

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